Teamsters Local 70, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* United States of America, Department of the Navy. Case 32-CC-509

April 29, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On December 14, 1981, Administrative Law Judge James S. Jenson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Intervenor, Defense Logistics Agency, filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Teamsters Local 70, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Oakland, California, its officers, agents, and representatives, shall take the action set forth in the Administrative Law Judge's recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Although we agree with the Administrative Law Judge's general discussion of the law, we find that he erroneously applied the majority opinion in *Building and Construction Trades Council of New Orleans, AFL-CIO (Markwell and Hartz, Inc.)*, 155 NLRB 319 (1965) (Members Fanning and Jenkins dissenting). In *Markwell and Hartz*, the majority applied the standards set forth in *Sailors' Union of the Pacific, AFL-CIO (Moore Dry Dock Company)*, 92 NLRB 547 (1950), to common situs picketing in the construction industry, a situation not present here.

Contrary to his colleagues, Member Hunter would adopt the Administrative Law Judge's Decision in its entirety.

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge: This case was heard before me in Oakland, California, on November 6, 1981.[1] The complaint, which issued on July 6, pursuant to a charge filed on July 1, alleges Teamsters Local 70, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent, violated Section 8(b)(4)(i) and (ii)(B) of the Act. Acknowledging that its picketing on July 1 and during the morning of July 2 may have been unlawful, Respondent claims that its picketing thereafter was lawful since it had a dispute with the Navy which was primary in character. All parties were afforded full opportunity to appear, to introduce evidence, and to examine and cross-examine witnesses. Pursuant to agreement of all counsel, further hearing was held on November 10, at which all parties argued orally, and in lieu of filing briefs, the General Counsel and counsel for Respondent each submitted the memoranda which they had previously submitted to the United States District Court in a 10(l) proceeding. The memoranda and oral arguments have been carefully considered.

Upon the entire record in the case, including the demeanor of the witnesses, and having considered the memoranda and oral arguments, I make the following:

FINDINGS OF FACT

I. JURISDICTION

It is alleged, admitted and found that the United States Navy and the Defense Logistics Agency are persons engaged in commerce within the meaning of Section 2(1), (6), and (7) of the Act, and that M.D. Largent Co. is a person and employer engaged in commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is alleged, admitted, and found that Teamsters Local 70, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

1. Whether Respondent's primary dispute was with the United States Government or Largent.

2. If with Largent, whether a broad order is appropriate.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The Defense Subsistence Region Pacific (DSRPAC), a regional office of the Defense Personnel Support Center (DPSC), is a part of the Defense Logistics Agency

[1] All dates herein are in 1981.

(DLA) of the United States Government, which provides services and supplies to all branches of the military service. The DLA reports directly to the Secretary of Defense. DPSC supplies the military services with medical, food, and clothing supplies. DSRPAC is the branch responsible for providing food to the military in the Pacific Ocean area. DSRPAC warehouses "freeze and chill" items at the Alameda Reefer Dock (ARDOCK) located in the Naval Supply Center, Alameda, California. DSRPAC annually contracts with private firms to perform the work of loading or "stuffing" and draying the seagoing containers used to transport the perishable supplies overseas. For at least 10 years members of Respondent have performed the "stuffing" operation, and between July 1, 1980, and June 30, 1981, it was performed by Baldwin Trucking, Inc., with whom Respondent has a collective-bargaining agreement. In May, three companies submitted bids for the 1981-82 contract, Baldwin, Largent, and Grove Trucking. In late May or early June, Don Gomez, a business representative of Respondent, was informed by a Baldwin employee that Largent, a nonunion employer, was going to be awarded the contract for the next year. Midafternoon on June 5, Gomez called Lieutenant Commander Mark Hertstein who is the DSRPAC chief of transportation. According to Hertstein, whom I credit, Gomez stated he had heard Largent had been awarded the stuffing contract at ARDOCK, and that since Largent was a nonunion operator, he wanted to set up a meeting with Hertstein to "somehow ensure that his people would be employed as of 1 July . . . otherwise our place would face a strike and be shut down as of 1 July . . . ." Hertstein offered to call DPSC, which is located in Philadelphia, Pennsylvania, the following Monday to find out if Largent had indeed been awarded the contract, and suggested Gomez contact Largent about "his people . . . going to be able to work."[2] On Monday, June 8, Hertstein called DPSC and learned that Largent had been awarded the contract as the primary carrier and that Baldwin was the alternate. He therefore called and advised Gomez of the development. Gomez requested a meeting with Hertstein, stating that one was definitely necessary and that he "was going to shut [ARDOCK] down as of July 1 if his people did not go to work . . . that if his people were not working, we would be taking money . . . out of his people's pockets and, also, the food out of the mouths of their families." Hertstein stated he could not make decisions for Largent and again suggested Gomez contact Largent regarding who he was going to hire. Gomez stated that Largent was a nonunion carrier and unless he hired union people ARDOCK would be shut down. Gomez acknowledged that he told Hertstein that "we represented union people, and we wanted a union carrier in there and that . . . I would hold my ground and strike the government, if necessary." He claimed he also told Hertstein "that I was very concerned about the prevailing wage" and that Hertstein gave him the name and telephone number of Lieutenant Colonel McGinty to call the transportation chief, in Philadelphia. Hertstein, on the other hand, testified that the first time Gomez ever mentioned Respondent's interest in Largent paying "prevailing wages" was when he received on July 1 a letter from Gomez dated June 30, wherein Gomez requested "U.S. Government" supply the Union with information indicating Largent was paying "prevailing wages . . . in accordance with Federal Laws." Having observed both Hertstein and Gomez testify, I am convinced that Hertstein had the better recollection and was telling the truth and that Gomez did not express a concern on June 8 with Largent's payment of prevailing wages. Gomez, on the other hand, did not have good recollection and was wrong when he claimed that Hertstein gave him Lieutenant Colonel McGinty's name and phone number on June 8. My conclusion is based on the fact Hertstein testified he gave Gomez the name and number on either June 11 or 12, which coincides with the date Gomez called McGinty's office and talked to Meyer Goldstein, McGinty's assistant.

A third telephone conversation occurred between Gomez and Hertstein on June 11 or 12, as noted above, and originated with Gomez. Gomez expressed displeasure that something had not been done and asked to speak to the admiral about setting up a meeting "because he was interested in averting a strike or a shut down of our installation . . . ." Hertstein referred him to McGinty in Philadelphia. In McGinty's absence, Gomez talked to Goldstein in Philadelphia twice on June 12, the first call initiated by Gomez and the second by Goldstein. According to Gomez, he told Goldstein he had been trying to set up a meeting with Hertstein, had been unsuccessful and intended to use political influence to get one and that Goldstein responded he would check it out. He admitted he said "something about shutting down the facility," "I told him that Marc Largent was a nonunion carrier and that over the years we have had a union carrier in there and that we have employees that historically have worked there but are subject to be dismissed and put out on the street and no way to take care of their families and et cetera, and that I may have to strike the government facility if this occurs." Goldstein's version of the conversation was to the effect that Gomez stated that the contract was to be awarded to Largent whose place of employment was located outside Respondent's jurisdiction, but that he had a reputation for not hiring union help and Gomez "was certain that he would not sign a collective-bargaining agreement with him and that if that took place that he intended to throw a picket line up at the facility and close us down." Goldstein stated he would look into the matter and call him back that day. He denied specifically that anything was said about prevailing or union wages.

Later in the day, Goldstein called Gomez back and, according to Goldstein whom I credit, reported that he was trying to come up with a solution. Gomez asked if Goldstein wanted to see a picket line and the facility closed down; that Goldstein responded in the negative and reiterated his proposal to find a resolution; that Gomez brought up Largent's name again and again threatened to "close the place down"; that Goldstein suggested Gomez contact Largent; that Gomez stated he

[2] Gomez admitted he told Hertstein that if he could not "get a meeting set up that I would strike the government."

had tried to unsuccessfully; that Gomez brought up the wages paid "plus fringe benefits"; that Goldstein asked what the fringe benefits were; and that Gomez responded he did not have them at his fingertips but would get them and call back.[3]

On Monday, June 15, Gomez called Goldstein and told him in detail what the fringe benefits were under Respondent's collective-bargaining agreements. Gomez "repeated his threat that he would close the place down if we persisted on giving the contract to Mr. Largent."

On June 24, Gomez called Goldstein again and was told that Goldstein was still "trying to resolve the problem." According to Goldstein, whom I credit and found in all instances to have better recall and to have testified more forthrightly than Gomez, Gomez "repeated his threat that if we persisted on giving the award to Largent he would close us down."

In the meantime, on June 5, after his first conversation with Gomez, Hertstein contacted Richard P. Lavin, counsel for DSRPAC, about Gomez' threat to shut down the ARDOCK facility if Largent was awarded the contract. Lavin in turn talked to Finnegan, counsel for the Navy, and it was concluded that provisions of the Service Contract Act should have been included in the bid for the work in dispute.[4] Consequently, on June 11, Lavin sent Hertstein a memorandum recommending that since the work to be performed was primarily stuffing, as opposed to draying, that the "tender agreements" be amended to include the Service Contract Act and that the carriers be subject to a Department of Labor (DOL) wage determination. On June 18, a request for a wage determination was made to DOL. On June 28, Hertstein had a copy of the wage determination hand delivered to each of the three bidders, Largent, Baldwin, and Grove, with a request that their resubmitted bids be in his office by close of business on June 29. The second and final award of the work was made to Largent on June 30. The same day, Hertstein informed Respondent, by hand-delivered letter, and Largent, both orally and by letter, that a two-gate system would be set up at the Alameda Naval Supply Center effective July 1, at 0600, and that gate no. 2 was reserved exclusively for Largent, its employees, subcontractors, and cargo. Accordingly, at 0600 the morning of July 1, two signs were posted at and near gate no. 1, the main gate to the Alameda Naval Supply Center, directing Largent's employees, cargo, and subcontractors to use only gate no. 2, and signs were placed at gate no. 2 directing Largent employees, cargo, and subcontractors to enter that gate only. Guards were posted at gate no. 2, and they, along with the guards at gate no. 1, were given instructions so that the instructions on the signs were carried out. There has been no showing that the integrity of the separate gates was breached at any time.

Following the posting of the gate signs the morning of July 1, pickets appeared at both gates bearing signs with the following legend:

Marc Largent
Pays its employees
Substandard Wages
and Conditions
UNFAIR TO
TEAMSTERS
LOCAL 70

That same day, Hertstein received a letter from Gomez dated June 30 asking that Hertstein "please supply us with the information indicating that Mark Largent Inc. is paying pervailing wages in this area in accordance with Federal Laws." Hertstein's hand-delivered letter to Gomez on the same date advised Gomez that Largent's contract covering the ARDOCK operation incorporated the Service Contract Act and that he agreed to pay the wages and benefits set forth in the DOL wage determination, a copy of which was enclosed.

Picketing resumed at both gates with the same signs the morning of July 2. At or about 11 a.m., a meeting was held with the president of Respondent, Muniz, Gomez, and Randall (whose authority was never established) representing the Union, Lavin, Sklar, Hertstein, and Captain Steret representing DSRPAC, and Finnegan and Captain Lunn representing the Naval Supply Center. At the commencement of the meeting, Hertstein was handed the following letter dated July 2:

> Dear Lt. Commander Hertstein:
>
> This letter is intended to explain Teamsters Local #70's current picketing activities at the Navy's Alameda Cold Storage facility.
>
> For many years the Navy has contracted with trucking firms handling container work at the Alameda Cold Storage location in compliance with the requirements of the Walsh-Healy Act, providing for the payment of prevailing wages to the employees who perform this work. Recently a new contract has been made by the Navy with a trucking firm which does not appear to be in compliance with the provisions of this Federal statute.
>
> Don Gomez, a Business Representative of local #70, has requested evidence from your office showing that the wages and economic benefits received by the employees presently performing the work are up to prevailing standards. The response he had received contained no evidence of any kind indicating the terms of the new contract, as applied to the wages and conditions of the employees performing

[3] Gomez did not deny the substance of the conversation. Instead, he testified in a vague manner that he brought up the subject of prevailing wages but that Goldstein acted like he did not understand.

[4] The Service Contract Act of 1965, 41 U.S.C. § 353(c) provides:

> (c) No contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargianing agreement as a result of arm's-length negotiation, to which such service employees would have been entitled if they were employed under the predecessor contract: Provided, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.

the work, and has led us to believe that the Navy is in complete violation of the Walsh-Healy Act.

Local #70 feels that the Navy is responsible for the fact that the container work is now being handled under substandard wages and economic conditions. We have ceased all picketing of the carrier involved, and are directing our protest against the Navy as the responsible party.

We are requesting a copy of the contract which the Navy now has with the new carrier, together with copies of solicitations for bids and any other documents relating to the manner in which the contract was let. We also want proof, in the form of payroll information, showing both wages and all fringe benefits received by the employees now performing this work. It is our position that the Navy has an obligation not only to follow correct procedures in its implementation of the Walsh-Healy Act, but also has a responsibility to investigate the present carrier's operations to make sure that the terms of that statute are being lived up to in fact.

We will be happy to meet with you or your representative to bring this dispute to an end. Until the matter is resolved, however, Local #70 intends to exercise its constitutional right peacefully to protest the actions of your office.

Very truly yours
/s/ Chuck Mack
Chuck Mack
Secretary-Treasurer

Respondent's representatives had brought a copy of the wage determination to the meeting and asked what the Navy was going to do to ensure that Largent was going to pay the prevailing wages and for proof that it was in fact being paid. Hertstein responded that since the contract had been in effect for only a day and a half that they had to assume Largent was acting in good faith. He advised Respondent's representatives that DOL had made the wage determination, is responsible for enforcing it, and if they had any information that Largent was not abiding by it that they should report it to the local office of DOL. A request was made for all paperwork related to the contract (tender), which was hand delivered to Respondent that afternoon. A request was also made for Largent's payroll records and a list of his employees, which the Government stated they did not have a right to, and that the DOL was the "correct avenue for getting those records." Respondent's representatives took the position that its dispute was with the Navy who would not assure them that Largent was paying prevailing wages and benefits, and Hertstein explained that the contract was with DLA which was not a branch of the Navy.[5] Near the end of the meeting, Muniz asked if the Government personnel was aware that picketing could spread to other naval installations in the Bay Area. Gomez testified that Respondent had analyzed the situation and concluded they were striking the wrong person and ". . . ought to strike the government, not Marc Largent, because they were responsible to show us that the prevailing wages was being paid." He acknowledged that Respondent did not know if Largent was paying the prevailing wage.

At or about the time of the meeting, Respondent changed the picket signs to read:

U.S. Navy
Alameda Cold Storage
Unfair
Violates Walsh/Healy Act
Refuses to Contract
Under Fair Wages
Teamsters Local No. 70

Respondent picketed with signs bearing the above legend at both gate no. 1 and gate no. 2 through midafternoon of July 6, and at the Oakland Naval Supply Center, Oakland, and the Alameda Naval Air Station on July 6. A temporary restraining order pursuant to Section 10(1) of the Act was issued midday on July 6, and a temporary injunction was granted on July 15. The current picketing at gate no. 2 is not alleged to be unlawful.

On July 8, Hertstein responded to Respondent's letter of July 2, as follows:

Dear Mr. Mack:

This is in response to your July 1981 letter.

Please be advised that the new tender agreement for stuffing and draying seavans at the Alameda Reefer Dock (ARDOCK) is in complaince with the Service Contract Act which the Department of Labor (DOL) has determined is applicable to the agreement. The tender agreement incorporates the Service Contract Act (SCA) provisions as well as the Department of Labor prevailing wages and fringe benefits determinations issued pursuant to the SCA.

Mr. Gomez at a meeting held at this agency on Thursday, July 2, 1981, was presented with copies of all the tenders submitted as well as all correspondence relating to the solicitation and selection of carriers under our tender solicitation.

Since Marc Largent, Inc., the primary carrier, has signed a tender agreeing to be bound by the Service Contract Act provisions including the payment of the prevailing wages and benefits that were determined by the DOL to be applicable to the tender, we cannot agree with your contention that the work at ARDOCK is being performed under substandard wages and economic conditions. Unless we receive evidence to the contrary, we must assume that this carrier made his contractual agreement to be bound by the SCA in good faith.

Your request for payroll information cannot be granted. Under 49 CFR Sec. 4.191 the DOL Wage and Hour Compliance Division is the authority to conduct compliance reviews and investigations under the Service Contract Act. Should you have cause to believe that the Service Contract Act is

[5] The relationship of the Navy and DLA at the Alameda Naval Supply Center is that of landlord and tenant.

> not being lived up to in fact by the primary carrier you may lodge a complaint with that office. For this purpose you may contact Mr. John Almerico, Area Director, U.S. Department of Labor, ESA Wage & Hour Division, Room 341, 211 Main St., San Francisco, CA 94105.
>
> If this agency has reason to believe that the SCA is not being adhered to under the tender agreement we will promptly refer the matter to the DOL Wage & Hour Division for investigation.
>
> Enclosed is a summary of the minutes of our meeting with Local 70 on 2 July 1981.

On August 19, Respondent requested the DOL, Wage and Hour Division, "to conduct an investigation and take appropriate action respecting a violation of the Services Contract Act . . . by a motor carrier named M.D. Largent Company." The DOL has advised that as of November 5, there had been no finding that Largent was in violation of the Service Contract Act. While the DOL audit disclosed that Largent had not been paying fringe benefit or pension plan contributions called for in the wage determination, he has as a carrier with a published tariff, exercised his right under the Service Contract Act to appeal the prevailing wage determination, and pending appeal has deposited in a trust account sufficient funds to cover amounts due his employees in the event his appeal is not successful. His attorney has informed him that there is a substantial possibility that he will prevail. It is clear that Gomez has never asked Largent to sign a collective-bargaining agreement.

B. *Conclusions*

The General Counsel contends the numerous threats Gomez made between June 5 and 24 with respect to shutting down Navy and DLA facilities unless Largent either hired Respondent's members or signed a contract with the Respondent, and its picketing of Naval facilities on July 1 and 2 with signs directed at Largent, shows that Respondent's primary and real dispute was with Largent, and that its picketing of the Government facilities had as an object the forcing or requiring of the Navy or DLA to cease doing business with Largent or to cause Largent to hire Respondent's members.

Respondent does not deny that Largent was the person with whom it had a dispute on July 1 and 2, as the picket signs state, but contends that on the latter date the Union concluded the real problem lay with the Government with respect to the application and enforcement of the Service Contract Act, and that it thereupon abandoned its dispute with Largent and instituted picketing agains the Government facilities to force the Government to make up for its derelictions in failing to carry out the purposes of the Service Contract Act. Therefore, it is argued, since its sole objective from July 2 was to compel action on the part of the Government in a dispute which Respondent perceived was with the Government, no violation can be found.

Section 8(b)(4)(i) and (ii)(B) makes it an unfair labor practice for a union:

> (i) to engage in, or to induce or encourage any individual employed by any person . . . to engage in, a strike or a refusal in the course of his employment to use . . . process . . . or otherwise handle or work on any goods . . . or to perform any services; or
>
> (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
>
> (B) forcing or requiring any person . . . to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees . . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

The section proscribes enmeshing neutral or secondary employers in disputes not their own, where an object is to force the cessation of business between the neutral and the employer with whom the labor organization has a labor dispute. The section requires that disputed union conduct be classified either as legitimate "primary" action directed against the offending employer or as unlawful "secondary" activity directed against the neutral employer with whom the union has no dispute. See *N.L.R.B.* v. *Local 825, International Union of Operating Engineers, AFL-CIO* [*Burns & Roe, Inc.*], 400 U.S. 297, 303 (1971); *Local 761, International Union of Electrical, Radio & Machine Workers, AFL-CIO* [*General Electric Company*] v. *N.L.R.B.*, 366 U.S. 667, 672-673 (1961). Generally speaking, union picketing occurring at the primary employer's premises and seeking only the disruption of his normal operations is considered primary and thus protected activity, whereas picketing extending beyond the premises of the primary employer to those of the neutral employer and designed to disrupt the latter's operations is secondary and prohibited. In situations where the primary and neutral employers perform separate work on the same premises such as here, the Board in *Sailors' Union of the Pacific (Moore Dry Dock Company)*, 92 NLRB 547, 549 (1950), developed certain criteria which were held to be "presumptive" of valid primary activity. In *General Electric, supra* at 677, the Supreme Court summarized the criteria as follows:

> (1) that the picketing be limited to times when the situs of dispute was located on the secondary premises, (2) that the primary employer be engaged in his normal business at the situs, (3) that the picketing take place reasonably close to the situs, and (4) that the picketing clearly disclose that the dispute was only with the primary employer.

The Supreme Court noted that the criteria were first developed to govern situations in which the primary employer was working at premises not his own. Finally in *Building and Construction Trades Council of New Orleans AFL-CIO (Markwell and Hartz)*, 155 NLRB 319 (1965), enfd. 387 F.2d 79 (5th Cir. 1967), cert. denied 391 U.S. 914 (1968), the Board applied the *Moore Dry Dock* crite-

ria to picketing which occurs at a situs not owned or customarily occupied by the primary employer. The Board held that where separate entrances to the site are set up, one for the primary employer and one for the neutral secondary employers, picketing that takes place at the gate reserved for the neutral secondary employers violates the *Moore Dry Dock* standards which require the union to confine its picketing as close by as possible to the location of the primary employer. I conclude that the Respondent's picketing on July 1-6 did not conform to *Moore Dry Dock* requirements 3 and 4.

At the outset, it is clear from the evidence that at all times material herein, Respondent has been engaged in a primary labor dispute with Largent in that he did not have a contract with Respondent nor employ its members, and that Respondent sought, through numerous threats and by picketing to enmesh the Navy and DLA, both neutrals to the dispute, with the object of forcing them to require Largent to sign a union contract and hire Respondent's members or to cease doing business with him. Thus, it is seen that (1) on June 5, Gomez told Hertstein that he wanted to set up a meeting since Largent was nonunion and that he wanted to ensure that Respondent's members would be employed as of July 1, or else the Alameda Naval Supply Center would be shutdown; (2) on June 8, Gomez told Hertstein that Largent was a nonunion carrier and that unless Largent hired Respondent's members, he would shut down the facility; (3) on June 12, in a conversation with Hertstein, Gomez expressed displeasure that nothing had been done and again threatened a strike or shutdown of the Navy facility; (4) also on June 12, in the first of two telephone conversations that day with Goldstein, Gomez expressed concern over the fact Largent was nonunion and he was certain Largent would not sign a collective-bargainig agreement, and if DLA persisted in letting Largent do the work, "that he intended to throw a picket line up at the facility and close us down"; (5) in the second conversation that day, Gomez brought up the fact Largent was nonunion and reiterated his threat to picket and "shut the place down" if DLA persisted in awarding the work to Largent; (6) on June 15, Gomez again repeated his threat to Goldstein to "close the place down if [DLA] persisted on giving the contract to Mr. Largent"; (7) on June 24, the same threat was made to Goldstein by Gomez; (8) on July 1 and 2, Respondent picketed with signs clearly designating Largent as the one with whom it had a dispute; and (9) on July 2, after Respondent supposedly believed Largent had commenced work at ARDOCK, impliedly threatened to picket other naval installations with the Bay Area, a threat it subsequently carried out when it picketed the Alameda Naval Air Station and the Oakland Naval Supply Center. By picketing the gate reserved for neutral employers on July 1 and 2, Respondent violated the *Moore Dry Dock* standards and deliberately chose to enmesh neutral entities in its dispute with Largent. As noted above, the object of Respondent's conduct was to force or require Largent to hire its members and recognize it as the employees collective-bargaining representative, or the Navy and DLA to cease doing business with Largent. Respondent thereby violated Section 8(b)(4)(i) and (ii) (B) of the Act. It is equally clear that its picketing the afternoon of July 2-6 did not comply with the *Moore Dry Dock* standards in that it did not take place reasonably close to the situs and failed to clearly disclose that its dispute was with Largent, the primary employer. Its conduct in abruptly claiming to have switched the primary subject of its dispute from Largent to either the Navy or DLA, was but a thinly veiled effort to legitimize its unlawful secondary activity. One would indeed need to be naive not to recognize it for what it actually was. *Brotherhood of Painters, Decorators and Paperhangers of America, Local Union No. 171, AFL-CIO (Centric Corporation)*, 218 NLRB 944 (1975), upon which Respondent relies, is clearly distinguishable from the case at hand. In *Centric*, the union had a longstanding dispute with Government agencies concerning the alleged enforcement of affirmative action programs. Unlike the case here, however, there was no evidence in *Centric* that the union had a primary dispute with another employer. Consequently, it was found in *Centric* that the union's picketing had the "limited object" of advertising the injustice of the Government's interpretation of the law and that it lacked the dual object of putting pressure on neutrals to gain removal of a nonunion employer from the job. Further, in *Centric*, the Government agencies against whom the union took action had the primary responsibility for insuring compliance with the Federal regulations, whereas here neither the Navy nor DLA is responsible for insuring compliance with DOL wage determinations. That function lies exclusively with DOL. The controlling case, and one strikingly similar, is *Millwrights Union, Local 102, of the United Brotherhood of Carpenters & Joiners of America, AFL-CIO (United States Department of the Navy Naval Supply Center)*, 246 NLRB 923 (1979). There, the evidence revealed the union's primary dispute was with an out-of-state employer under contract to install a conveyor system at the Oakland Naval Supply Center. There, as here, prepicketing statements by union representatives disclosed the union's concern was with the contractor and not the Navy. While the picket signs identified the Navy as the source of its dispute, it was found that the picket signs were inaccurate and that the union's dispute was with the contractor (primary employer) and that an object of the picketing was to enmesh the Navy in its dispute with the contractor and therefore proscribed by Section 8(b)(4)(B). That the Respondent's claim that its dispute here is with the Navy or DLA over their failure to contract for prevailing wages is a subterfuge is made clear from the fact that at no time was it shown that Largent was not paying prevailing wages and benefits. Indeed, it could not have been shown since his employees did not commence performance of any work under the contract with DLA until July 6, after the picketing had commenced. In sum, I find that the General Counsel has established that Respondent's conduct was "tactically calculated" to put pressure on neutral employers, DLA and the Navy, to force them to cease doing business with Largent, or to force Largent to hire its members and recognize and bargain with Respondent, thereby violating Section 8(b)(4)(i) and (ii)(B) of the Act.

CONCLUSIONS OF LAW

1. M.D. Largent Co. is a person and employer engaged in commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act.

2. The United States Navy and the Defense Logistics Agency each is a person engaged in commerce within the meaning of Section 2(1), (6), and (7) of the Act.

3. Teamsters Local 70, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

4. By picketing at gate no. 1 of the Alameda Naval Supply Center and thereby inducing and encouraging individuals employed by the Navy, the Defense Logistics Agency, and other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to perform services, with an object of forcing or requiring the Navy, the Defense Logistics Agency, or any other person to cease doing business with M.D. Largent Co., or to force or require M.D. Largent Co. to hire members of Respondent and to recognize or bargain with Respondent as the representative of Largent's employees, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4) and (i)(B) of the Act.

5. By threatening, coercing, and restraining the Navy, the Defense Logistics Agency, and other persons engaged in commerce or in an industry affecting commerce with an object of forcing or requiring the Navy, the Defense Logistics Agency, or any other persons to cease doing business with M.D. Largent Co. or to force or require M.D. Largent Co. to hire members of Respondent and to recognize or bargain with Respondent as the representative of Largent's employees, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4) and (ii)(B) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel seeks a broad order based on two prior formal settlement stipulations, contending the instant case and those cases demonstrate Respondent's propensity for violating the Act's secondary boycott provisions. The settlement stipulation in Case 32-CC-51, United States Department of the Navy, Naval Supply Center, was signed by the parties in July 1978 and contains the following provision:

> Respondent agrees that for the sole purpose of determining the proper scope of an order to be entered against Respondent in any other proceeding under the Act by the Board, the General Counsel of the Board, or their authorized representatives, this Settlement Stipulation may be considered as though it were an adjudicated determination of the Board enforced by a United States Court of Appeals that Respondent has engaged in the conduct set forth above in paragraph 9 hereof. With the exception of the foregoing paragraph, Respondent Union, by entering into this Stipulation, does not admit the commission of any unfair labor practice and does not waive any defenses of law or fact concerning this matter which Respondent Union may seek to assert in any proceeding not involving the Board.

The settlement stipulation in Case 32-CC-202-1, OK Trucking Company, Inc., was signed by the parties in April 1981 and contains the following provision:

> . . . for the sole purpose of determining the appropriate breadth of any Order to be entered against Respondent in any future unfair labor practice proceeding, this Stipulation may be considered as though it were an adjudicated determination of the Board, enforced by an appropriate United States Court of Appeals, that Respondent has engaged in the conduct alleged in the Complaint herein. With the exception of the foregoing sentence, Respondent, by entering into this Stipulation, does not admit the commission of any unfair labor practice and does not waive any defenses of law or fact concerning this matter which Respondent Union may seek to assert in any proceeding not involving the Board.

In *Brotherhood of Teamsters Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (H.A. Carney and David Thompson, Partners, d/b/a C & T Trucking Co.)*, 191 NLRB 11 (1971), the Board declined to issue a broad 8(b)(4)(B) order against Respondent herein, stating:

> . . . we have long held, with court approval, that a broad remedial order is appropriate whenever a proclivity to violate the Act is established, either by the facts within a particular case, or by prior Board decisions against the respondent at bar based upon similar unlawful conduct in the past.

The Board noted that it ". . . has frequently held that settlement agreements, and consent decrees arising therefrom, have no probative value in establishing that violations of the Act have occurred and, hence, they may not be relied upon to establish a 'proclivity' to violate the Act," citing *Brotherhood of Teamsters & Auto Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Sam-Jo, Inc., d/b/a Smiser Freight Service)*, 174 NLRB 98 (1969), another 8(b)(4)(B) case, involving Respondent herein, wherein a broad order was rejected. In *Sequoia District Council of Carpenters, AFL-CIO (Nick Lattanzio d/b/a Lattanzio Enterprises)*, 206 NLRB 67 (1973), enfd. 499 F.2d 129 (9th Cir. 1974), the Board adopted the recommended order of an Administrative Law Judge who had recommended a broad order based on two stipulations that did not contain language permitting them to be considered as though they were adjudicated determinations of the Board enforced by a United States Court of

Appeals. In *Tri-State Building and Construction Trades Council, AFL-CIO*, 257 NLRB 295 (1981), the Board explained there was no inconsistency among its decisions dealing with broad orders and stated that formal settlement agreements which do *not contain* a nonadmissions clause may be relied on to establish a proclivity to violate the Act. The stipulations relied on by the General Counsel herein do not contain nonadmission clauses insofar as Board proceedings and enforcement of Board orders are concerned. The nonadmission clauses involved herein are applicable only to proceedings not involving the Board. I conclude, therefore, that the settlement stipulations may be relied on by the General Counsel to establish Respondent's proclivity to violate the Act. It is abundantly clear that Respondent is not a stranger to conduct violating Section 8(b)(4)(B) of the Act.[6] Accordingly, I shall recommend a broad cease-and-desist order be issued.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[7]

The Respondent, Teamsters Local 70, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Oakland, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Picketing at gate no. 1 of the Alameda Naval Supply Center, or in any other manner engaging in, or inducing or encouraging individuals employed by the Navy, the Defense Logistics Agency, or any other employer or person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services

(b) In any manner threatening, coercing, or restraining the Navy, the Defense Logistics Agency, or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require the Navy or the Defense Logistics Agency, or any other employer or person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with M.D. Largent Co., or any other employer or person; or forcing or requiring M.D. Largent Co., or any other employer to hire its members or to recognize or bargain with Teamsters Local 70, unless Teamsters Local 70 has been certified as the representative of such employees under the provisions of Section 9 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post at its business office and meeting halls, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish the said Regional Director with signed copies of the aforesaid notice for posting by the Navy and/or the Defense Logistics Agency, if willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[6] Official notice has also been taken of *C & T Trucking Co., Inc., supra*, and *Smiser Freight Service, supra*, both involving 8(b)(4)(B) violations by Respondent herein.

[7] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT picket at gate no. 1 if the Alameda Naval Supply Center, or otherwise engage in, or induce or encourage individuals employed by the Navy, the Defense Logistics Agency, or any other employer or person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services.

WE WILL NOT in any manner threaten, coerce, or restrain the Navy, the Defense Logistics Agency, or any other person engaged in commerce or in an industry affecting commerce, *where in either case* an object thereof is to force or require the Navy or the Defense Logistics Agency, or any other employer or person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with M.D. Largent Co., or any other employer or person; or forcing or requiring

M.D. Largent Co., or any other employer to hire our members or to recognize or bargain with us, unless we have been certified as the representative of such employees under the provisions of Section 9 of the Act.

TEAMSTERS LOCAL 70, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA